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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R07-OAR-2011-0470, FRL-9484-5]

**Approval and Promulgation of Implementation Plans; Iowa:
Prevention of Significant Deterioration; Greenhouse Gas
Tailoring Rule Revision**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: EPA is approving an Iowa State Implementation Plan (SIP) revision relating to regulation of Greenhouse Gases (GHGs) under Iowa's Prevention of Significant Deterioration (PSD) program. This revision was submitted by the Iowa Department of Natural Resources (IDNR) to EPA on December 22, 2010. It is designed to align Iowa's regulations with the "PSD and Title V Greenhouse Gas Tailoring Final Rule" published June 3, 2010, in the Federal Register. EPA is approving the revision because the Agency has determined that the SIP revision, already adopted by Iowa as a final effective rule, is in accordance with the Clean Air Act (CAA) and EPA regulations regarding PSD permitting for GHGs.

EFFECTIVE DATE: This final rule will be effective [insert date 30 days from date of publication of this document in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R07-OAR-2011-0470. All documents in the docket are listed on the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Air Planning and Development Branch, Air and Waste Management Division, U.S. Environmental Protection Agency, Region 7, 901 North 5th Street, Kansas City, Kansas 66101. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: For information regarding the Iowa SIP, contact Mr. Larry Gonzalez, Air Planning and Development Branch, Air and Waste Management Division, U.S. Environmental Protection Agency, Region 7, 901 North 5th Street, Kansas City, Kansas 66101. Mr. Gonzalez's telephone number is (913) 551-7041, and his e-mail address is: gonzalez.larry@epa.gov.

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I. What final action is EPA taking in this final rule?

On December 22, 2010, IDNR submitted a request to EPA to approve revisions to the State's SIP and Title V program to incorporate recent rule amendments adopted by the Iowa Environmental Protection Commission. These amendments establish thresholds for GHG emissions in Iowa's PSD and Title V regulations at the same emissions thresholds and in the same time-frames as those specified by EPA in the "PSD and Title V

Greenhouse Gas Tailoring Final Rule" (75 FR 31514), hereafter referred to as the "Tailoring Rule," ensuring that smaller GHG sources emitting less than these thresholds will not be subject to permitting requirements for GHGs that they emit. The amendments to the SIP clarify the applicable thresholds in the Iowa SIP, address the flaw discussed in the "Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans Final Rule," 75 FR 82536 (December 30, 2010) (the "PSD SIP Narrowing Rule"), and incorporate state rule changes adopted at the state level into the Federally-approved SIP.

On August 11, 2011, EPA published a proposed rulemaking to approve Iowa's SIP revision. See 76 FR 49708. EPA did not receive any public comments on this proposal. In this final rule, pursuant to section 110 of the CAA, EPA is approving these revisions into the Iowa SIP.¹

¹ As stated in the proposal, EPA intends to address Iowa's December 22, 2010, request to approve revisions to the Title V program relating to greenhouse gases in a subsequent rulemaking.

II. What is the background for the PSD SIP approval by EPA in this final rule?

This section briefly summarizes EPA's recent GHG-related actions that provide the background for this final action. More detailed discussion of the background is found in the preambles for those actions. In particular, the background is contained in what we call the PSD SIP Narrowing Rule,² and in the preambles to the actions cited therein.

A. GHG-related Actions

EPA has recently undertaken a series of actions pertaining to the regulation of GHGs that, although for the most part distinct from one another, establish the overall framework for this final action on the Iowa SIP. Four of these actions include, as they are commonly called, the "Endangerment Finding" and "Cause or Contribute Finding," which EPA issued in a single final action,³ the "Johnson Memo Reconsideration,"⁴ the "Light-Duty Vehicle Rule,"⁵ and the "Tailoring Rule." Taken together

² "Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule." 75 FR 82536 (December 30, 2010).

³ "Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act." 74 FR 66496 (December 15, 2009).

⁴ "Interpretation of Regulations that Determine Pollutants Covered by Clean Air Act Permitting Programs." 75 FR 17004 (April 2, 2010).

⁵ "Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule." 75 FR 25324 (May 7, 2010).

and in conjunction with the CAA, these actions established regulatory requirements for GHGs emitted from new motor vehicles and new motor vehicle engines; determined that such regulations, when they took effect on January 2, 2011, subjected GHGs emitted from stationary sources to PSD requirements; and limited the applicability of PSD requirements to GHG sources on a phased-in basis. EPA took this last action in the Tailoring Rule, which, more specifically, established appropriate GHG emission thresholds for determining the applicability of PSD requirements to GHG-emitting sources.

In many states, such as Iowa, PSD is implemented through the SIP and so in December 2010, EPA promulgated several rules to implement the new GHG PSD SIP program. Recognizing that some states had approved SIP PSD programs that did not apply PSD to GHGs, EPA issued a SIP Call and, for some of these states, a Federal Implementation Plan (FIP).⁶ Recognizing that other

⁶ Specifically, by notice dated December 13, 2010, EPA finalized a "SIP Call" that would require those states with SIPs that have approved PSD programs but do not authorize PSD permitting for GHGs to submit a SIP revision providing such authority. "Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Substantial Inadequacy and SIP Call," 75 FR 77698 (December 13, 2010). EPA made findings of failure to submit in some states which were unable to submit the required SIP revision by their deadlines, and finalized FIPs for such states. See, e.g. "Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Failure To Submit State Implementation Plan Revisions Required for Greenhouse Gases," 75 FR 81874 (December 29, 2010); "Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Federal Implementation Plan," 75 FR 82246 (December 30, 2010). Because Iowa's SIP already authorizes Iowa to regulate GHGs once GHGs became subject to PSD requirements on January 2, 2011, Iowa is not subject to the SIP Call or FIP.

states had approved SIP PSD programs that do apply PSD to GHGs, but that do so for sources that emit as little as 100 or 250 tpy of GHG, and that do not limit PSD applicability to GHGs to the higher thresholds in the Tailoring Rule, EPA issued the PSD SIP Narrowing Rule. Under that rule, EPA withdrew its approval of the affected SIPs to the extent those SIPs covered GHG-emitting sources below the Tailoring Rule thresholds. EPA based its action primarily on the "error correction" provisions of CAA section 110(k)(6).

B. Iowa's Actions

On July 20, 2010, Iowa provided a letter to EPA, in accordance with a request to all states from EPA in the Tailoring Rule, with confirmation that the State of Iowa has the authority to regulate GHGs in its PSD program. The letter also confirmed Iowa's intent to amend its air quality rules for the PSD program for GHGs to match the thresholds set in the Tailoring Rule. See the docket for this final rulemaking for a copy of Iowa's letter.

In the PSD SIP Narrowing Rule, published on December 30, 2010, EPA withdrew its approval of Iowa's SIP (among other SIPs) to the extent that the SIP applies PSD permitting requirements to GHG emissions from sources emitting at levels below those set

in the Tailoring Rule.⁷ As a result, Iowa's current approved SIP provides the State with authority to regulate GHGs, but only at and above the Tailoring Rule thresholds; and requires new and modified sources to receive a Federal PSD permit based on GHG emissions only if they emit at or above the Tailoring Rule thresholds.

The basis for this SIP revision is that limiting PSD applicability to GHG sources at the higher thresholds in the Tailoring Rule is consistent with the SIP provisions that require assurances of adequate resources, and thereby addresses the flaw in the SIP that led to the PSD SIP Narrowing Rule. Specifically, CAA section 110(a)(2)(E) includes as a requirement for SIP approval that states provide "necessary assurances that the State... will have adequate personnel [and] funding... to carry out such [SIP]." In the Tailoring Rule, EPA established higher thresholds for PSD applicability to GHG-emitting sources on grounds that the states generally did not have adequate resources to apply PSD to GHG-emitting sources below the Tailoring Rule thresholds,⁸ and no state, including Iowa,

⁷ "Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule." 75 FR 82536 (December 30, 2010).

⁸ Tailoring Rule, 75 FR at 31517.

asserted that it did have adequate resources to do so.⁹ In the PSD SIP Narrowing Rule, EPA found that the affected states, including Iowa, had a flaw in their SIP at the time they submitted their PSD programs, which was that the applicability of the PSD programs was potentially broader than the resources available to them under their SIP.¹⁰ Accordingly, for each affected state, including Iowa, EPA concluded that EPA's action in approving the SIP was in error, under CAA section 110(k)(6), and EPA rescinded its approval to the extent the PSD program applies to GHG-emitting sources below the Tailoring Rule thresholds.¹¹ EPA recommended that states adopt a SIP revision to incorporate the Tailoring Rule thresholds, thereby (i) assuring that under state law, only sources at or above the Tailoring Rule thresholds would be subject to PSD; and (ii) avoiding confusion under the Federally approved SIP by clarifying that the SIP applies to only sources at or above the Tailoring Rule thresholds.¹²

⁹ PSD SIP Narrowing Rule, 75 FR at 82540.

¹⁰ Id. at 82542.

¹¹ Id. at 82544.

¹² Id. at 82540.

IDNR's December 22, 2010, SIP submission establishes thresholds for determining which stationary sources and modification projects become subject to permitting requirements for GHG emissions under Iowa's PSD program. Specifically, the SIP revision includes changes - which are already effective - to Iowa's Administrative Code, revising the subrule 33.3(1) definition of "regulated New Source Review (NSR) pollutant" to specifically define the term "subject to regulation" for the PSD program, and to define "greenhouse gases (GHGs)" and "tpy CO₂ equivalent emissions (CO₂e)." Additionally, the amendments to subrule 33.3(1) specify the methodology for calculating an emissions increase for GHGs, the applicable thresholds for GHG emissions subject to PSD, and the schedule for when the applicability thresholds take effect.

Iowa is currently a SIP-approved State for the PSD program, and has previously incorporated EPA's 2002 NSR reform revisions for PSD into its SIP. See 72 FR 27056 (May 14, 2007).¹³ The changes to Iowa's PSD program regulations are substantively the same as the Federal provisions amended in EPA's Tailoring Rule.

¹³ This rulemaking does not act on any other revisions to the Iowa PSD rules occurring after the PSD rules approved by EPA in 2007. Therefore this rulemaking only addresses the 2010 revisions discussed herein, relating to the State's adoption of the Tailoring Rule provisions.

As part of its review of Iowa's submittal, EPA performed a line-by-line review of Iowa's proposed revision and has determined that it is consistent with the Tailoring Rule.

III. Final Action

Pursuant to section 110 of the CAA, EPA is approving Iowa's December 22, 2010 revisions to the Iowa SIP, relating to PSD requirements for GHG-emitting sources. EPA has made the determination that this SIP revision is approvable because it is in accordance with the CAA and EPA regulations regarding PSD permitting for GHGs. The detailed rationale for this action is set forth in the proposed rulemaking referenced above, and in this final rule.

Since EPA is finalizing its approval of Iowa's changes to its air quality regulations to incorporate appropriate thresholds for GHG permitting applicability into Iowa's SIP, then section 52.822(b) of 40 CFR part 52, added in EPA's PSD SIP Narrowing Rule to codify the limitation of its approval of Iowa's PSD SIP to exclude the applicability of PSD to GHG-emitting sources below the Tailoring Rule thresholds, is no longer necessary. In this action, EPA is also amending section 52.822(b) of 40 CFR part 52 to remove this unnecessary regulatory language.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k), 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves the State's law as meeting Federal requirements and does not impose additional requirements beyond those imposed by the State's law. For that reason, this action:

- Is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this final rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP program is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal

governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review, nor does it extend the time within which a petition for

judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements.

(See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Greenhouse gases, Incorporation by reference, Intergovernmental relations, and Reporting and recordkeeping requirements.

Dated: October 20, 2011

Karl Brooks,
Regional Administrator,
Region 7.

40 CFR part 52 is amended as follows:

PART 52- [AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401 et seq.

Subpart Q - Iowa

2. Section 52.820(c) is amended by revising the entry for "567-33.3" under Chapter 33 to read as follows:

§52.820 Identification of plan

* * * * *

(c)***

EPA-Approved Iowa Regulations

Iowa citation	Title	State effective date	EPA approval date	Explanation
* * * * * Chapter 33 - Special Regulations and Construction Permit Requirements for Major Stationary Sources - Prevention of Significant Deterioration (PSD) of Air Quality * * * * *				
567-33.3	Special construction permit requirement for major stationary sources in areas designated attainment or unclassified (PSD)	12/22/2010	[Insert date of publication in <u>Federal</u> <u>Register</u>] [Insert citation of publication]	
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§52.822 [Amended]

3. Section 52.822 is amended by removing and reserving
paragraph (b).

[FR Doc. 2011-27991 Filed 10/28/2011 at 8:45 am; Publication
Date: 10/31/2011]